

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NATIONWIDE LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim Defendant,

vs.

ST. CLAIR MOBILE HOME PARKS,
LLC,

Defendant/Counterclaim Plaintiff/
Third Party Plaintiff/
Third Party Counterclaim Defendant,

vs.

TRIAD CAPITAL ADVISORS, INC., and JOSEPH
MONTELEONE,

Third Party Defendants/
Third Party Counterclaim Plaintiffs.

Case No. 4:04CV01746 AGF

MEMORANDUM AND ORDER

This matter is before the Court¹ on Plaintiff Nationwide Life Insurance Company's unopposed motion to strike Defendant St. Clair Mobile Home Parks, LLC's demand for a jury trial. The written agreement between the parties that is the subject matter of this diversity action provides that the parties waived their right to a trial by jury in any action brought by either party arising out of the agreement. This provision is

¹ The parties have consented to the exercise of authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

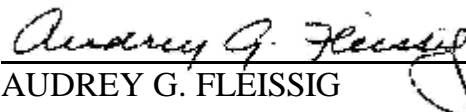
prominently displayed in capital letters in a separate paragraph of the agreement, and Defendant, a business entity, was represented by counsel at all relevant times.

By Order dated July 13, 2004, this Court entered judgment in Plaintiff's behalf on the issue of Defendant's liability to Plaintiff under the agreement, and on Defendant's counterclaim for rescission of the agreement. Under Missouri law, there is nothing invalid about a knowing and voluntary contractual waiver of the right to a jury trial, Malan Realty Investors, Inc. v. Harris, 953 S.W.2d 624, 627 (Mo. 1997) (en banc), and federal courts will enforce such waivers. Cooperative Fin. Assoc., Inc. v. Garst, 871 F. Supp. 1168, 1171 (N.D. Iowa 1995). Defendant has not responded to Plaintiff's motion to strike the demand for a jury trial as to the remaining issue of damages, and this Court discerns no reason for not granting the motion.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to strike Defendant's demand for a jury trial is **GRANTED**. [Doc. #37]

Dated this 14th day of July, 2005.



AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE